

# Congress of the United States

Washington, DC 20515

November 7, 2003

Mr. Thomas A. Scully  
Administrator  
Centers for Medicare and Medicaid Services  
200 Independence Avenue, SW, Room 314G  
Washington, D.C. 20201

Dear Mr. Scully:

The Commonwealth of Massachusetts has applied for a Medicaid waiver titled "Massachusetts Proposal for Demonstration Affecting Assets of Institutionalized Individuals". The proposal is designed to significantly change asset appraisal of the elderly and disabled when applying for institutionalized long term care under Medicaid. We would like to address several concerns with the waiver application, the impact on the applicant pool and the families of applicants.

1. The expansion of the look-back periods

The waiver would disqualify otherwise eligible applicants by presuming intent to hide assets even when the alleged event occurred many years prior to the applications for Medicaid coverage. For example, it would extend the look-back for real estate transfers beyond the current 3 years to 5 years, and it would double the look-back for annuities and irrevocable trusts to 10 years from the existing 5 years.

We understand the Commonwealth wishes to discourage the intentional transfer of assets to shield them from an asset review. We also understand that estate planners will try to shield assets from state confiscation to repay for institutional care. Nevertheless, it is stated by the Commonwealth that "The regulations governing the transfer of assets should not provide an incentive for advanced estate planning." Estate planning is by definition performed in advance in order to allow an orderly conveyance of the estate. While ten years seems a reasonable time for planning of ones estate it is an excessive period to presume intent to defraud and appears to be driven not by overwhelming evidence of abusive sheltering of assets, but rather by a desire to penalize the majority of recipients for the fraudulent behavior of a few. In addition, there are already statutory provisions in place to prevent abuse of the public funds. We urge you not to amend the existing look-back periods.

2. The thresholds for penalties for transfers

The Commonwealth's waiver request would set thresholds for the imposition of penalties for transfers. Again, we question the premise upon which these new rules are based. By disqualifying beneficiaries who are currently eligible, we can expect a deterioration of their health and that of the immediate family that may lead to the possibility of increased long-term healthcare costs incurred under emergency conditions.

3. Primary residence exemption

We urge you to make clear that the primary residence, irrespective of its value, remains exempt from the asset review.

4. Retroactivity

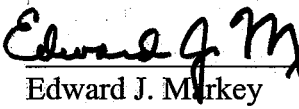
We urge you not to approve any change in the requested asset test that is retroactive. The effective date of any waiver, and therefore the beginning of a new asset test, if any, should become effective, and be applied, only to future beneficiaries.

5. Need for Public Scrutiny

We wish to emphasize the lack of opportunity for the public to comment on this proposal. Many health care provider agencies as well as advocates for the affected community have not been given notice of this proposal. As a result, there has not been a public airing or vetting on the wisdom of the thresholds and other eligibility requirements contained in the waiver request. Thus, we urge you not to approve this request unless and until certain fundamental steps have been taken, including publication and a period of comment, that ensure that we guard against unintended, and potentially catastrophic, consequences for this vulnerable population.

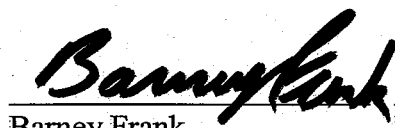
Thank you for your prompt consideration of this matter. We look forward to working with you to ensure that Medicaid remains a critical safety program for those in need.

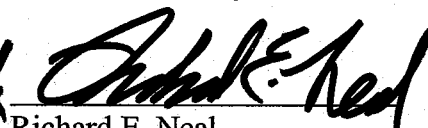
Sincerely,

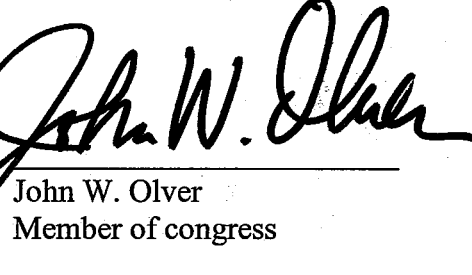
  
Edward J. Markey  
Member of Congress

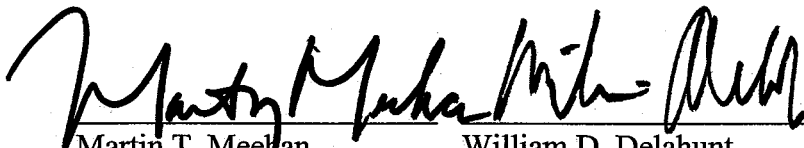
  
Edward M. Kennedy  
United States Senator

  
John F. Kerry  
United States Senator

  
Barney Frank  
Member of Congress

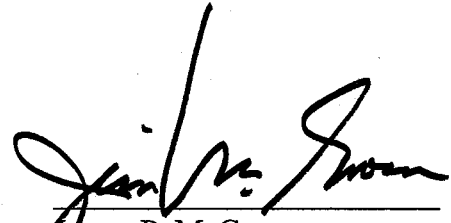
  
Richard E. Neal  
Member of Congress

  
John W. Olver  
Member of congress

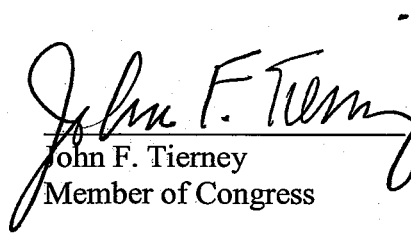


Martin T. Meehan  
Member of Congress

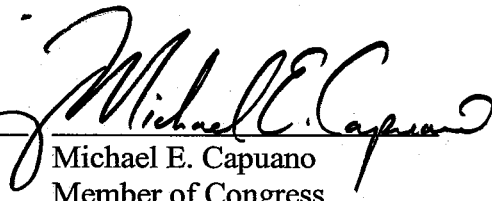
William D. Delahunt  
Member of Congress



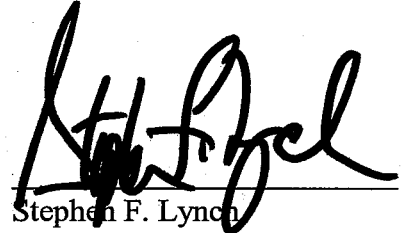
James P. McGovern  
Member of congress



John F. Tierney  
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Michael E. Capuano  
Member of Congress



Stephen F. Lynch  
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